(788) and Texas (790) by Statute: that is, in twelve States and one District. The Supreme Court of the United States answers this first question affirmatively (774), as do the Courts of Alabama (775), Arkansas (776), California (777) by the Civil Code, Connecticut (778), Dakota (778) under the Civil Code, Georgia (779) under the Code, Indiana (781), Maine (783), Massachusetts (783), Michigan (783) by Statute, Minnesota (784), Missouri (785), New Hampshire (786), New Jersey (786), New York (786), North Carolina (787), Vermont (790), Virginia (790), and Wisconsin (791): that is, twenty other States, counting Dakota as two, and the Supreme Court of the United States.

[So that the greater number of jurisdictions, as well as the better and more modern reasons, favor the views of the dissenting judge in the principal case. This renders an examination of the second question of greater moment. This second question growing out of the first, must be answered negatively in all cases where the agreed valuation does not limit the damages. Where the first question is answered affirmatively, the second does not necessarily receive a similar answer. So far as the circumstances of the cases have brought this subject to the attention of the judges, or the statutes have provided, there has been a declaration that express, special notice shall be considered as agreed to, in California (*supra*, page 777), Maine (783), New York (786), and North Carolina (787); but the consignor or consignee, is not bound by notice, nor except by his express agreement, in Dakota (*supra*, page 778), Georgia (779), Michigan (783), Minnesota (784), Missouri (785), and Vermont (790).

JAMES C. SELLERS.

ABSTRACTS OF RECENT DECISIONS.

BANKS AND BANKING.

The restrictive indorsement on a draft left with a bank for collection, is notice to the bank actually making the collection that the first bank is merely an agent to collect, and therefore the collecting bank can not acquire any better title to the draft, or its proceeds, than the first bank had: *Peck et al.* v. *First Nat. Bank*, U. S. C. Ct., S. D. N. Y., May 22, 1890.

BILLS AND NOTES.

One who buys a promissory note made for a valuable consideration, payable "to the order of———" and fills in the blank, writing his own name therein, is a "subsequent holder" within the act of Congress determining the jurisdiction of the Circuit Courts of the United States, approved March 3, 1887, as corrected by the act of August 13, 1888, and cannot therefore sue thereon, the original holder and maker being in the State. Such a note is in effect payable to bearer: *Steel* v. *Rathbun*, U. S. C. Ct., D. Ore., May 23, 1890.

CONSTITUTIONAL LAW.

The boxes, in which bottles of whiskey, each sealed up and packed in uncovered wooden boxes furnished by the express company, marked "To be returned," shipped from one State to another, are

the "original packages" and not the bottles: *In re Harmon*, U. S. C. Ct., N. D. Miss., Aug. 6, 1890.

The business of running Pullman cars, run wholly within a State, is taxable as a privilege: *Gibson Co.* v. *Pullman Smith Car Co.*, U. S. C. Ct., W. D. Tenn., April 28, 1890.

The trial and commitment of one who has already been tried and acquitted of the same offense is depriving him of his liberty "without due process of law" within the meaning of the 14th amendment of the Constitution of the United States: *Ex parte Ulrich*, U. S. D. Ct., W. D. Mo., June 23, 1890.

COPYRIGHT.

There is no infringement of copyright in a picture, where the two are dissimilar, the attitude, general expression, and general appearance of the two figures unlike, and different, the variations being more than colorable: *Munro* v. *Smith et al.*, U. S. C. Ct., S. D. N. Y., May 5, 1890.

COSTS.

The costs of printing the bill, subsequent pleadings and other documents in a suit in the Circuit Court of the United States, cannot be taxed, there being no rule, and the fee-bill (Section 823, Rev. Stat.) being silent thereon, even though there be an agreement between counsel to tax the same: *Lee* v. *Simpson*, U. S. C. Ct., D. S. C., June 11, 1890.

CRIMINAL LAW.

One, who pleads not guilty, and is put upon his trial for a felony, evidence being introduced by the State, and the case adjourned for the trial of another, and the jury discharged on such adjourned hearing by the judge on the ground of his own ill health without the prisoner's consent, cannot be again tried for the same offense, the discharge being equivalent to an acquittal: *Ex parte Ulrich*, U. S. D. Ct., W. D. Mo., June 23, 1890.

FRAUDULENT CONVEYANCE.

A Conveyance of land by a debtor to his wife presumedly in satisfaction of a debt due by him to her, but really with the intention of preserving it from his creditors, and with an agreement to execute a mortgage for his benefit, is void: *Marshall* v. *Whitney et al.*, U. S. C. Ct., D. Ind., July 30, 1890.

INJUNCTION.

Joint suit for an injunction will not be sustained where persons have been separately indicted for the sale of intoxicating liquors in the original packages, and separately enjoined from making such sales, even though they are agent and sub-agent of the importer: *Woolstein et al.*, v. *Welch*, U. S. C. Ct., D. Kans., July 18, 1890.

INSURANCE.

An action lies against an insurance company for loss by fire where it has brought action before and recovered its premiums after a fire has occurred, even though the policy provides, "In case the assured fails to pay the premium note, this policy shall cease, and remain void during the time said note remains unpaid after its

maturity, and no legal action on the part of this company shall be construed as reviving the policy. The payment of the premium, however, revives the policy, and makes it good for the balance of its term:" *Phœnix Ins. Co.* v. *Tomlinson et al.*, S. Ct. Ind., Sept. 18, 1890.

A baggage checker of a transfer company, who lives in one place, whose business it is to meet and board trains, and check baggage to other lines, is a railroad employe within the meaning of the following condition in an accident policy: "This insurance does not cover entering, or trying to enter or leave a moving conveyance using steam as a motive power * * * railroad employes excepted:" *Cotten* v. *Fidelity & Casualty Co.*, U. S. C. Ct., S. D. Miss., January 17, 1890.

Warehousemen have an insurable interest in cotton insured by them in their own name and can recover therefor under a policy which provides, "cotton in bales, their own, or held by them in trust, or on commission, or on joint account with others, or sold but not delivered," although the cotton was owned by another and the fact was not disclosed: *Pelzer Manuf'g Co.* v. *St. Paul Fire & Marine Ins. Co.*, U. S. C. Ct., S. C., Febry. 4, 1890.

INTERSTATE COMMERCE.

An express company engaged in business as an independent concern, for its own profit, is not subject to the provisions of the interstate commerce act as construed by the commission: *United States* v. *Morsman*, U. S. D. Ct., E. D. Mo., May 21, 1890.

An indictment which does not show that such company is a mere adjunct or bureau of a railroad company or combination of railroad companies, does not bring the company within the act: *Id.*

Injunction will lie in equity to restrain proceedings by a prosecuting attorney to prevent the agents of non-resident importers selling liquors in the original packages, where the State law is a violation of the interstate commerce clause of the Constitution, such proceedings being an interference with property rights under the Constitution, Rev. Stat. U. S. § 1979, giving the right of action at law or suit in equity: *Schandler Bottling Co.* v. *Welch et al.*, U. S. C. Ct., D. Kans., July 18, 1890.

Small packages of liquor in any form or size may be sold by the importer or his agent in a prohibition State, the size of the package being of no consequence; and an agent imprisoned for making sales in such original package will be released on *habeas corpus*, the Kansas Laws being in contravention of the interstate commerce clause of the Constitution: *In re Beine; In re Jockheck et als.*, U. S. C. Ct., D. Kans., June 14, 1890.

JURISDICTION.

The State authorities have jurisdiction over a United States marshal arrested, while on his way to serve process of the United States commissioner, under State authority for forgery, it not appearing that his arrest was for an act done pursuant to federal authority, or with intent to interfere with the service of such process: *In re Miller*, U. S. D. Ct., E. D. S. C., May 10, 1890.

NATURALIZATION.

Cancellation of a certificate or decree of naturalization will be decreed in a federal court at the suit of the United States, where such certificate has been obtained by fraud in a State Court: *United States* v. *Morsch*, U. S. C. Ct., E. D. Mo., June 12, 1890.

NEGLIGENCE.

It is negligence for a sailing vessel to use a fog-horn sounded by the breath, instead of, by bellows as directed by article twelve of the sailing regulations: *The Catalonia, The Rebecca A. Taulane:* U. S. D. Ct., D. Mass., Aug. 18, 1890.

It is negligence for a vessel to run at the rate of seven knots an hour in a frequented part of the ocean, and in a fog so thick that a ship's hull and sails can not be seen hardly more than a ship's length distant: *Id.*

It is contributory negligence for a person, knowing a fast train is due, to get on the track, and he cannot recover should an accident occur: *Farve* v. *Louisville & N. R. Co.*, U. S. C. Ct., S. D. Miss., March 7, 1890.

PARTNERSHIP.

Where a surviving partner, under an attachment issued in a suit brought by him for a partnership debt, purchases real estate at the sheriff's sale, such property is not partnership real estate descendible to the heirs of the deceased partner, but may be converted into personal property by sale by such surviving partner: *Bright et al.* v. *Land & River Imp. Co. et al.*, U. S. C. Ct., W. D. Wis., June 6, 1890.

PATENTS.

A license to use a patent cannot be revoked by the licensor, where the license does not contain a power of revocation, without the consent of the licensee. The licensor's only remedy is by action at law for breach of contract: *Chase* v. *Cox*, U. S. C. Ct., E. D. Pa., Jan. 19, 1890.

PRACTICE.

Service of writ by publication may be had on a non-resident, in a suit to establish a trust in real estate, even though the bill also prays an account and other relief: *Porter Land & Water Co.* v. *Baskin*, U. S. C. Ct., S. D. Cal., Aug. 8, 1890.

RAILROADS.

The speed of trains is in the discretion of a railroad company, when such trains are not passing through an incorporated city or town, or crossing a public street or highway, and the engineer in such case is not bound to look out for persons on the track: *Farve* v. *Louisville & N. R. Co.*, U. S. C. Ct., S. D. Miss., March 7, 1890.

REMOVAL OF CAUSES.

Causes may be removed from the State to the Federal Courts on the ground of local prejudice under the Act of March 3, 1887, the amount being over five hundred, but less than two thousand, dollars: *Frishman* v. *Insurance Cos.*, U. S. C. Ct., D. Kans., March 14, 1890.

Where some of the defendants are residents and others non-residents of the State, a cause, wherein there is only a single controversy, cannot be removed from a State to a Circuit Court under the second section of the act of 1887: *Arkansas Valley Smelting Co.* v. *Cowenhoven et al.*, U. S. C. Ct., D. Colo., March 6, 1890.

STATUTE OF FRAUDS.

The Statute does not apply to an agreement to support a child until he is of age; it not being an agreement "not to be performed within a year," as the child might die within the year: *Wooldbridge* v. *Stern*, U. S. C. Ct., W. D. Mo., May 5, 1890.

TRADE-MARKS.

An infringement is made out where the defendants have so placed numbers and words, indicating sizes and quantities, in similarity to those on the orator's labels, as to lead in the direction of the conclusion that methodical imitation was intended, even though defendant use the words "Warranted Hose Supporter" for "Warren Hose Supporter": *Frost et al.* v. *Rindskopf*, U. S. C. Ct., E. D. N. Y., April, 1890.

Jurisdiction cannot be had in the circuit court of a bill for infringing trade-marks used in foreign commerce under Act of Congress March 3, 1881, both parties residing in the State, and there being no evidence that the trade-mark is used in foreign commerce: *Graveley et al.* v. *Graveley et al.*, U. S. C. Ct., W. D. Va., April 19, 1890.

The words "Warren Hose Supporter" used in connection with a cut of a hose supporter connected with a stocking, and placed as labels on boxes containing hose supporters, are entitled to protection as a trade-mark, being more than merely descriptive, and sufficiently arbitrary to denote fairly the origin of the goods: *Frost et al.* v. *Rindskopf et al.*, U. S. C. Ct., E. D. N. Y., April, 1890.

WITNESS.

A witness who is not a party to a suit against executors is competent to give evidence as to transactions between his testator and himself, under section eight hundred and fifty-eight of the Revised Statutes of the United States even though he is interested in the result of such action: *Stephens* v. *Bernays*, U. S. D. Ct., E. D. Mo., June 7, 1890.

ERNEST WATTS.